UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDWARD J. ANDRESS,	:	No. C-1-93-207
Plaintiff,	:	
v.	:	ORDER DENYING PLAINTIFF'S MOTION TO REVIEW AND REJECT MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
POSTMASTER GENERAL, MARVIN T. RUNYON	:	
Defendant	:	

This matter is before the Court on the Plaintiff's Motion to Review and Reject the Magistrate's Judge's Report and Recommendation (doc. 22), the Plaintiff's amended Motion To Review and Reject the Magistrate's Judge's Report and Recommendation (doc. 23), and the Defendant's response (doc. 24).

We have reviewed this matter de novo and agree that the instant action is duplicative of the Plaintiff's earlier action (Case No. C-1-92-417) which was filed in this Court on May 15, 1992 and thereafter dismissed on March 3, 1993, for failure to perfect service of process. In that case the Plaintiff was given ample instruction and opportunity by the Magistrate Judge to perfect service on the Defendant. The district court affirmed the Magistrate

Judge's dismissal of the case and that decision was affirmed by the United State Court of Appeals for the Sixth Circuit.

The fact that the Plaintiff has now refiled his complaint does not cure the service defects in the earlier filed case. Thus, the instant action was not timely filed. We further note that the Plaintiff has not

supported his claim of equitable tolling with any legal support.

We not that pro se pleadings are to be reviewed indulgently, and we have done so here. We also acknowledge that the result of this decision and the decisions under review may appear harsh to the Plaintiff. However, the Plaintiff's pro se status can not be viewed as a license to avoid the federal rules of civil procedure as well as the statute of limitations. Thus, despite the indulgence with which we view pro se pleadings, we are unable to ignore the defects in this case.

Accordingly, we conclude that the Report and Recommendation (doc. 21) should be AFFIRMED, and that the Defendant's Motion for Summary Judgment be GRANTED and the Plaintiff's complaint be DISMISSED WITH PREJUDICE. The Plaintiff's Motions to Review the Magistrate Judge's Findings and Memorandum of Law is hereby DENIED, and this action is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated: 03/28/94

/s/ S. Arthur Spiegel
United States District Judge